

112TH CONGRESS
1ST SESSION

S. 710

AN ACT

To amend the Solid Waste Disposal Act to direct the Administrator of the Environmental Protection Agency to establish a hazardous waste electronic manifest system.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Hazardous Waste
3 Electronic Manifest Establishment Act”.

4 **SEC. 2. HAZARDOUS WASTE ELECTRONIC MANIFEST SYS-**
5 **TEM.**

6 (a) IN GENERAL.—Subtitle C of the Solid Waste Dis-
7 posal Act (42 U.S.C. 6921 et seq.) is amended by adding
8 at the end the following:

9 **“SEC. 3024. HAZARDOUS WASTE ELECTRONIC MANIFEST**
10 **SYSTEM.**

11 “(a) DEFINITIONS.—In this section:

12 “(1) BOARD.—The term ‘Board’ means the
13 Hazardous Waste Electronic Manifest System Advi-
14 sory Board established under subsection (f).

15 “(2) FUND.—The term ‘Fund’ means the Haz-
16 arduous Waste Electronic Manifest System Fund es-
17 tablished by subsection (d).

18 “(3) PERSON.—The term ‘person’ includes an
19 individual, corporation (including a Government cor-
20 poration), company, association, firm, partnership,
21 society, joint stock company, trust, municipality,
22 commission, Federal agency, State, political subdivi-
23 sion of a State, or interstate body.

24 “(4) SYSTEM.—The term ‘system’ means the
25 hazardous waste electronic manifest system estab-
26 lished under subsection (b).

1 “(5) USER.—The term ‘user’ means a haz-
2 ardous waste generator, a hazardous waste trans-
3 porter, an owner or operator of a hazardous waste
4 treatment, storage, recycling, or disposal facility, or
5 any other person that—

6 “(A) is required to use a manifest to com-
7 ply with any Federal or State requirement to
8 track the shipment, transportation, and receipt
9 of hazardous waste or other material that is
10 shipped from the site of generation to an off-
11 site facility for treatment, storage, disposal, or
12 recycling; and

13 “(B)(i) elects to use the system to com-
14 plete and transmit an electronic manifest for-
15 mat; or

16 “(ii) submits to the system for data proc-
17 essing purposes a paper copy of the manifest
18 (or data from such a paper copy), in accordance
19 with such regulations as the Administrator may
20 promulgate to require such a submission.

21 “(b) ESTABLISHMENT.—Not later than 3 years after
22 the date of enactment of this section, the Administrator
23 shall establish a hazardous waste electronic manifest sys-
24 tem that may be used by any user.

25 “(c) USER FEES.—

1 “(1) IN GENERAL.—The Administrator may im-
 2 pose on users such reasonable service fees as the Ad-
 3 ministrator determines to be necessary to pay costs
 4 incurred in developing, operating, maintaining, and
 5 upgrading the system, including any costs incurred
 6 in collecting and processing data from any paper
 7 manifest submitted to the system after the date on
 8 which the system enters operation.

9 “(2) COLLECTION OF FEES.—The Adminis-
 10 trator shall—

11 “(A) collect the fees described in para-
 12 graph (1) from the users in advance of, or as
 13 reimbursement for, the provision by the Admin-
 14 istrator of system-related services; and

15 “(B) deposit the fees in the Fund for use
 16 in accordance with this subsection.

17 “(3) FEE STRUCTURE.—

18 “(A) IN GENERAL.—The Administrator, in
 19 consultation with information technology ven-
 20 dors, shall determine through the contract
 21 award process described in subsection (e) the
 22 fee structure that is necessary to recover the
 23 full cost to the Administrator of providing sys-
 24 tem-related services, including costs relating
 25 to—

- 1 “(i) materials and supplies;
- 2 “(ii) contracting and consulting;
- 3 “(iii) overhead;
- 4 “(iv) information technology (includ-
- 5 ing costs of hardware, software, and re-
- 6 lated services);
- 7 “(v) information management;
- 8 “(vi) collection of service fees;
- 9 “(vii) investment of any unused serv-
- 10 ice fees;
- 11 “(viii) reporting and accounting;
- 12 “(ix) employment of direct and indi-
- 13 rect Government personnel dedicated to es-
- 14 tablishing and maintaining the system; and
- 15 “(x) project management.

16 “(B) ADJUSTMENTS IN FEE AMOUNT.—

17 “(i) IN GENERAL.—The Adminis-

18 trator, in consultation with the Board,

19 shall increase or decrease amount of a

20 service fee determined under the fee struc-

21 ture described in subparagraph (A) to a

22 level that will—

23 “(I) result in the collection of an

24 aggregate amount for deposit in the

25 Fund that is sufficient to cover cur-

1 rent and projected system-related
2 costs (including any necessary system
3 upgrades); and

4 “(II) minimize, to the maximum
5 extent practicable, the accumulation
6 of unused amounts in the Fund.

7 “(ii) EXCEPTION FOR INITIAL PERIOD
8 OF OPERATION.—The requirement de-
9 scribed in clause (i)(II) shall not apply to
10 any additional fees that accumulate in the
11 Fund, in an amount that does not exceed
12 \$2,000,000, during the 3-year period be-
13 ginning on the date on which the system
14 enters operation.

15 “(iii) TIMING OF ADJUSTMENTS.—Ad-
16 justments to service fees described in
17 clause (i) shall be made—

18 “(I) initially, at the time at
19 which initial development costs of the
20 system have been recovered by the
21 Administrator such that the service
22 fee may be reduced to reflect the
23 elimination of the system development
24 component of the fee; and

1 “(II) periodically thereafter, upon
 2 receipt and acceptance of the findings
 3 of any annual accounting or auditing
 4 report under subsection (d)(6), if the
 5 report discloses a significant disparity
 6 for a fiscal year between the funds
 7 collected from service fees under this
 8 subsection for the fiscal year and ex-
 9 penditures made for the fiscal year to
 10 provide system-related services.

11 “(d) HAZARDOUS WASTE ELECTRONIC MANIFEST
 12 SYSTEM FUND.—

13 “(1) ESTABLISHMENT.—There is established in
 14 the Treasury of the United States a revolving fund,
 15 to be known as the ‘Hazardous Waste Electronic
 16 Manifest System Fund’, consisting of—

17 “(A) such amounts as are appropriated to
 18 the Fund under paragraph (2); and

19 “(B) any interest earned on investment of
 20 amounts in the Fund under paragraph (4).

21 “(2) TRANSFERS TO FUND.—There are appro-
 22 priated to the Fund amounts equivalent to amounts
 23 collected as fees and received by the Administrator
 24 under subsection (c).

25 “(3) EXPENDITURES FROM FUND.—

1 “(A) IN GENERAL.—Subject to paragraph
2 (2), on request by the Administrator, the Sec-
3 retary of the Treasury shall transfer from the
4 Fund to the Administrator such amounts as the
5 Administrator determines to be necessary to
6 pay costs incurred in developing, operating,
7 maintaining, and upgrading the system under
8 subsection (c).

9 “(B) USE OF FUNDS.—

10 “(i) IN GENERAL.—Fees collected by
11 the Administrator and deposited in the
12 Fund under this section shall be available
13 to the Administrator for use in accordance
14 with this section without fiscal year limita-
15 tion and without further appropriation.

16 “(ii) OVERSIGHT.—The Administrator
17 shall carry out all necessary measures to
18 ensure that amounts in the Fund are used
19 only to carry out the goals of establishing,
20 operating, maintaining, upgrading, man-
21 aging, supporting, and overseeing the sys-
22 tem.

23 “(4) INVESTMENT OF AMOUNTS.—

24 “(A) IN GENERAL.—The Secretary of the
25 Treasury shall invest such portion of the Fund

as is not, in the judgment of the Secretary of the Treasury and the Administrator, required to meet current withdrawals.

“(B) INTEREST-BEARING OBLIGATIONS.—Investments may be made only in—

“(i) interest-bearing obligations of the United States; or

“(ii) obligations, participations, or other instruments that are lawful investments for fiduciaries, trusts, or public funds, as determined by the Secretary of the Treasury.

“(C) ACQUISITION OF OBLIGATIONS.—For the purpose of investments under paragraph (1), obligations may be acquired—

“(i) on original issue at the issue price; or

“(ii) by purchase of outstanding obligations at the market price.

“(D) SALE OF OBLIGATIONS.—Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.

“(E) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption

1 of, any obligations held in the Fund shall be
2 credited to, and form a part of, the Fund.

3 “(5) TRANSFERS OF AMOUNTS.—

4 “(A) IN GENERAL.—The amounts required
5 to be transferred to the Fund under this sub-
6 section shall be transferred at least monthly
7 from the general fund of the Treasury to the
8 Fund on the basis of estimates made by the
9 Secretary of the Treasury.

10 “(B) ADJUSTMENTS.—Proper adjustment
11 shall be made in amounts subsequently trans-
12 ferred to the extent prior estimates were in ex-
13 cess of or less than the amounts required to be
14 transferred.

15 “(6) ACCOUNTING AND AUDITING.—

16 “(A) ACCOUNTING.—For each 2-fiscal-year
17 period, the Administrator shall prepare and
18 submit to the Committee on Environment and
19 Public Works of the Senate and the Committee
20 on Energy and Commerce of the House of Rep-
21 resentatives a report that includes—

22 “(i) an accounting of the fees paid to
23 the Administrator under subsection (c) and
24 disbursed from the Fund for the period
25 covered by the report, as reflected by fi-

1 nancial statements provided in accordance
2 with—

3 “(I) the Chief Financial Officers
4 Act of 1990 (Public Law 101–576;
5 104 Stat. 2838) and amendments
6 made by that Act; and

7 “(II) the Government Manage-
8 ment Reform Act of 1994 (Public
9 Law 103–356; 108 Stat. 3410) and
10 amendments made by that Act; and

11 “(ii) an accounting describing actual
12 expenditures from the Fund for the period
13 covered by the report for costs described in
14 subsection (c)(1).

15 “(B) AUDITING.—

16 “(i) IN GENERAL.—For the purpose
17 of section 3515(c) of title 31, United
18 States Code, the Fund shall be considered
19 a component of an Executive agency.

20 “(ii) COMPONENTS OF AUDIT.—The
21 annual audit required in accordance with
22 sections 3515(b) and 3521 of title 31,
23 United States Code, of the financial state-
24 ments of activities carried out using

1 amounts from the Fund shall include an
2 analysis of—

3 “(I) the fees collected and dis-
4 bursed under this section;

5 “(II) the reasonableness of the
6 fee structure in place as of the date of
7 the audit to meet current and pro-
8 jected costs of the system;

9 “(III) the level of use of the sys-
10 tem by users; and

11 “(IV) the success to date of the
12 system in operating on a self-sus-
13 taining basis and improving the effi-
14 ciency of tracking waste shipments
15 and transmitting waste shipment
16 data.

17 “(iii) FEDERAL RESPONSIBILITY.—
18 The Inspector General of the Environ-
19 mental Protection Agency shall—

20 “(I) conduct the annual audit de-
21 scribed in clause (ii); and

22 “(II) submit to the Administrator
23 a report that describes the findings
24 and recommendations of the Inspector
25 General resulting from the audit.

1 “(e) CONTRACTS.—

2 “(1) AUTHORITY TO ENTER INTO CONTRACTS
3 FUNDED BY SERVICE FEES.—The Administrator
4 may enter into 1 or more information technology
5 contracts with entities determined to be appropriate
6 by the Administrator (referred to in this subsection
7 as ‘contractors’) under which—

8 “(A) the Administrator agrees to award a
9 contract for the provision of system-related
10 services; and

11 “(B) the contractor agrees to assume the
12 initial risk of the information technology invest-
13 ment, and to obtain reimbursement for invest-
14 ment costs, operating costs, and other fees, by
15 receiving as payment an agreed-upon share of
16 the amounts collected as fees by the Adminis-
17 trator under subsection (c).

18 “(2) TERM OF CONTRACT.—A contract awarded
19 under this subsection shall have a term of not more
20 than 10 years.

21 “(3) ACHIEVEMENT OF GOALS.—The Adminis-
22 trator shall ensure, to the maximum extent prac-
23 ticable, that a contract awarded under this sub-
24 section—

25 “(A) is performance-based;

1 “(B) identifies objective outcomes; and

2 “(C) contains performance standards that
3 may be used to measure achievement and goals
4 to evaluate the success of a contractor in per-
5 forming under the contract and the right of the
6 contractor to payment for services under the
7 contract, taking into consideration that a pri-
8 mary measure of successful performance shall
9 be the development of a hazardous waste elec-
10 tronic manifest system that—

11 “(i) meets the needs of the user com-
12 munity (including States that rely on data
13 contained in manifests);

14 “(ii) attracts sufficient user participa-
15 tion and service fee revenues to ensure the
16 viability of the system;

17 “(iii) decreases the administrative
18 burden on the user community; and

19 “(iv) provides the waste receipt data
20 applicable to the biennial reports required
21 by section 3002(a)(6).

22 “(4) PAYMENT STRUCTURE.—Each contract
23 awarded under this subsection shall include a provi-
24 sion that specifies—

1 “(A) the service fee structure of the con-
2 tractor that will form the basis for payments to
3 the contractor;

4 “(B) the fixed-share ratio of monthly serv-
5 ice fee revenues from which the Administrator
6 shall reimburse the contractor for system-re-
7 lated development, operation, and maintenance
8 costs and provide an additional profit or fee
9 commensurate with the risk undertaken by the
10 contractor in performing in accordance with the
11 contract;

12 “(C) the amount of additional trans-
13 actional costs attributed to—

14 “(i) the ancillary costs of the Admin-
15 istrator in implementing and managing the
16 system, including the costs of integrating
17 the applications of the contractor with the
18 central data exchange architecture of the
19 Environmental Protection Agency;

20 “(ii) the direct and indirect personnel
21 costs incurred by the Administrator to em-
22 ploy personnel dedicated to the implemen-
23 tation and management of the system; and

24 “(iii) expenses incurred in procuring
25 any independent contractor services to as-

1 sist staff of the Administrator in the prep-
 2 aration of financial statements and reports
 3 and the conduct of regular user group and
 4 governance meetings necessary for the
 5 oversight of the system.

6 “(5) CANCELLATION AND TERMINATION.—

7 “(A) IN GENERAL.—If the Administrator
 8 determines that sufficient funds are not made
 9 available for the continuation in a subsequent
 10 fiscal year of a contract entered into under this
 11 subsection, the Administrator shall cancel or
 12 terminate the contract.

13 “(B) COSTS.—The costs of cancellation or
 14 termination under subparagraph (A) may be
 15 paid using—

16 “(i) appropriations available for per-
 17 formance of the contract;

18 “(ii) unobligated appropriations avail-
 19 able for acquisition of the information
 20 technology procured under the contract; or

21 “(iii) funds subsequently appropriated
 22 for payment of costs of the cancellation or
 23 termination.

24 “(C) NEGOTIATION OF AMOUNTS.—The
 25 amount payable in the event of cancellation or

1 termination of a contract entered into under
2 this subsection shall be negotiated with the con-
3 tractor at the time at which the contract is
4 awarded.

5 “(D) AUTHORITY TO ENTER INTO CON-
6 TRACTS.—The Administrator may enter into a
7 contract under this subsection for any fiscal
8 year, regardless of whether funds are made spe-
9 cifically available for the full costs of cancella-
10 tion or termination of the contract, if—

11 “(i) funds are available at the time at
12 which the contract is awarded to make
13 payments with respect to a contingent li-
14 ability in an amount equal to at least 100
15 percent of the estimated costs of a can-
16 cellation or termination during the first
17 fiscal year of the contract, as determined
18 by the Administrator; or

19 “(ii) funds described in clause (i) are
20 not available as described in that clause,
21 but the contractor—

22 “(I) is informed of the amount of
23 any unfunded contingent liability; and

1 “(II) agrees to perform the con-
 2 tract despite the unfunded contingent
 3 liability.

4 “(6) NO EFFECT ON OWNERSHIP.—Regardless
 5 of whether the Administrator enters into a contract
 6 under this subsection, the system shall be owned by
 7 the Federal Government.

8 “(f) HAZARDOUS WASTE ELECTRONIC MANIFEST
 9 SYSTEM ADVISORY BOARD.—

10 “(1) ESTABLISHMENT.—Not later than 3 years
 11 after the date of enactment of this section, the Ad-
 12 ministrator shall establish a board to be known as
 13 the ‘Hazardous Waste Electronic Manifest System
 14 Advisory Board’.

15 “(2) COMPOSITION.—The Board shall be com-
 16 posed of 9 members, of which—

17 “(A) 1 member shall be the Administrator
 18 (or a designee), who shall serve as Chairperson
 19 of the Board; and

20 “(B) 8 members shall be individuals ap-
 21 pointed by the Administrator—

22 “(i) at least 2 of whom shall have ex-
 23 pertise in information technology;

24 “(ii) at least 3 of whom shall have ex-
 25 perience in using or represent users of the

1 manifest system to track the transpor-
 2 tation of hazardous waste under this sub-
 3 title (or an equivalent State program); and

4 “(iii) at least 3 of whom shall be a
 5 State representative responsible for proc-
 6 essing those manifests.

7 “(3) DUTIES.—The Board shall meet annually
 8 to discuss, evaluate the effectiveness of, and provide
 9 recommendations to the Administrator relating to,
 10 the system.

11 “(g) REGULATIONS.—

12 “(1) PROMULGATION.—

13 “(A) IN GENERAL.—Not later than 1 year
 14 after the date of enactment of this section, the
 15 Administrator shall promulgate regulations to
 16 carry out this section.

17 “(B) INCLUSIONS.—The regulations pro-
 18 mulgated pursuant to subparagraph (A) may
 19 include such requirements as the Administrator
 20 determines to be necessary to facilitate the
 21 transition from the use of paper manifests to
 22 the use of electronic manifests, or to accommo-
 23 date the processing of data from paper mani-
 24 fests in the electronic manifest system, includ-
 25 ing a requirement that users of paper manifests

1 submit to the system copies of the paper mani-
2 fests for data processing purposes.

3 “(C) REQUIREMENTS.—The regulations
4 promulgated pursuant to subparagraph (A)
5 shall ensure that each electronic manifest pro-
6 vides, to the same extent as paper manifests
7 under applicable Federal and State law, for—

8 “(i) the ability to track and maintain
9 legal accountability of—

10 “(I) the person that certifies that
11 the information provided in the mani-
12 fest is accurately described; and

13 “(II) the person that acknowl-
14 edges receipt of the manifest;

15 “(ii) if the manifest is electronically
16 submitted, State authority to access paper
17 printout copies of the manifest from the
18 system; and

19 “(iii) access to all publicly available
20 information contained in the manifest.

21 “(2) EFFECTIVE DATE OF REGULATIONS.—Any
22 regulation promulgated by the Administrator under
23 paragraph (1) and in accordance with section 3003
24 relating to electronic manifesting of hazardous waste

1 shall take effect in each State as of the effective
2 date specified in the regulation.

3 “(3) ADMINISTRATION.—The Administrator
4 shall carry out regulations promulgated under this
5 subsection in each State unless the State program is
6 fully authorized to carry out those regulations in lieu
7 of the Administrator.

8 “(h) REQUIREMENT OF COMPLIANCE WITH RESPECT
9 TO CERTAIN STATES.—In any case in which the State in
10 which waste is generated, or the State in which waste will
11 be transported to a designated facility, requires that the
12 waste be tracked through a hazardous waste manifest, the
13 designated facility that receives the waste shall, regardless
14 of the State in which the facility is located—

15 “(1) complete the facility portion of the applica-
16 ble manifest;

17 “(2) sign and date the facility certification; and

18 “(3) submit to the system a final copy of the
19 manifest for data processing purposes.”.

20 “(b) CONFORMING AMENDMENT.—The table of con-
21 tents of the Solid Waste Disposal Act (42 U.S.C. 6901)

- 1 is amended by inserting at the end of the items relating
- 2 to subtitle C the following:

“Sec. 3024. Hazardous waste electronic manifest system.”.

Passed the Senate August 2, 2011.

Attest:

Secretary.

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To amend the Solid Waste Disposal Act to direct the Administrator of the Environmental Protection Agency to establish a hazardous waste electronic manifest system.